

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 25. BOARD OF PODIATRY EXAMINERS

[R06-34]

#### PREAMBLE

- 1. Sections Affected**  
R4-25-103
- Rulemaking Action**  
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. §§ 32-822(A), 32-822(B), 32-826, 32-827, 32-829  
Implementing statutes: A.R.S. §§ 32-825, 32-830
- 3. The effective date of the rules:**  
April 8, 2006
- 4. A list of all previous notices appearing in the *Register* addressing the final rule:**  
Notice of Rulemaking Docket Opening: 11 A.A.R. 4309, October 28, 2005  
Notice of Proposed Rulemaking: 11 A.A.R. 4858, November 18, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Linda Wells, Executive Director  
Address: 1400 W. Washington, Suite 230  
Phoenix, AZ 85007  
Telephone: (602) 542-3095  
Fax: (602) 542-3093  
E-mail: linda.wells@podiatry.state.az.us
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**  
The purpose of this rulemaking is to increase the Board's fees for an application for examination under A.R.S. §§ 32-822, 32-825, and 32-827 to \$450, issuance of a license under A.R.S. § 32-826 to \$225, and renewal to \$275 under A.R.S. § 32-829. The Board has not raised these fees since 1989. In fact the last time the Board imposed a new fee was 10 years ago for licensees who dispensed drugs or devices. The Board is responsible for overseeing the practice of podiatry in Arizona by evaluating applications of those who wish to practice podiatry in Arizona, licensing qualified individuals, ensuring that licensees conform to the Board's statutes and rules, investigating complaints, and applying appropriate disciplinary action to licensees who violate the Board's statutes and rules. The Board performs these oversight and regulatory functions to protect the health and safety of those persons who use the services of licensed podiatrists. In 2001 the Board's operating costs began to exceed the revenues it receives through its licensing fees authorized under A.R.S. § 32-830. The Board has determined that it must increase its fees in order to continue its oversight and regulatory functions.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
The Board did not review or rely on any study.

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**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

The rulemaking impacts applicants, licensees, consumers seeking podiatry services, and the Board. The Board bears moderate costs for writing the rule and related economic, small business, and consumer impact statement and mailing the new rule to interested persons. The Board's administrative costs to implement the rule are minimal. The Board will realize a substantial increase in revenues from the increased fees. It is necessary to raise these fees to continue the Board's licensing and oversight functions

The increased cost for a license by examination or license by comity is minimal for each applicant. The increased cost for issuance of a license is minimal for each applicant.

A licensee will be minimally affected by the increase in the license renewal fee.

A podiatrist who employs other podiatrists and chooses to pay their licensing fees will be affected by the fee increases.

A licensee may choose to pass the cost of the increase to consumers of podiatry services. However, consumers benefit from the Board's continuing oversight of podiatrists because the Board's mission is to ensure that only competent podiatrists practice in Arizona by protecting consumers from improper or inadequate delivery of podiatry services.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The Board did not make any changes to the rule.

**11. A summary of the comments made regarding the rule and the agency response to them:**

The Board did not receive any comments on the rule.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously made as an emergency rule?**

No.

**15. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 25. BOARD OF PODIATRY EXAMINERS**

**ARTICLE 1. GENERAL PROVISIONS**

Section

R4-25-103. Fees

**ARTICLE 1. GENERAL PROVISIONS**

**R4-25-103. Fees**

The Board shall charge the following fees, which are not refundable unless A.R.S. § 41-1077 applies:

1. Application for examination ~~pursuant to~~ according to A.R.S. §§ 32-822(A) and 32-825, ~~\$250.00~~, \$450.00.
2. Application for examination ~~pursuant to~~ according to A.R.S. § 32-827, ~~\$250.00~~, \$450.00.
3. License issuance, ~~\$100.00~~, \$225.00.
4. Annual renewal, ~~\$200.00~~, \$275.00.
5. No change
6. No change
7. No change
8. No change

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TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

[R06-35]

**PREAMBLE**

- 1. Sections Affected**  
R12-5-534
- Rulemaking Action**  
New Section
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statutes: A.R.S. § 37-102(A); A.R.S. § 37-102(B)  
Implementing statutes: A.R.S. § 37-132(A)(1); A.R.S. § 37-132(B)(8)
- 3. The effective date of the rules:**  
April 8, 2006
- 4. A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening: 10 A.A.R. 4601, November 12, 2004  
Notice of Proposed Rulemaking: 11 A.A.R. 378, January 14, 2005  
Notice of Public Information: 11 A.A.R. 1942, May 20, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Chuck Hudson  
Manager, Environmental Section  
Address: Arizona State Land Department  
1616 W. Adams  
Phoenix, AZ 85007  
Telephone: (602) 542-2657  
Fax: (602) 542-3507  
E-mail: chudson@land.az.gov  
Name: Lillian Moodey  
Manager, Land Conservation and Transfer Section  
Address: Arizona State Land Department  
1616 W. Adams  
Phoenix, AZ 85007  
Telephone: (602) 542-2643  
Fax: (602) 542-5223  
E-mail: lmoodey@land.az.gov
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**  
The State Land Department manages more than nine million acres of Trust land and resources and has a fiduciary responsibility to enhance value and optimize economic return for its 14 Trust beneficiaries including the public schools and other public institutions. While public use of State Trust land is not prohibited, it is regulated to ensure protection of the land and its resources, and to compensate the Trust beneficiaries for its use.  
A.R.S. § 37-132(B)(8) authorizes the Commissioner to close urban lands to specific uses for dust abatement, reducing risk of environmental hazards to public health and safety, or for land and resource remediation. These same issues occur on the Trust's rural lands. The Agency considers it necessary to initiate a rule that closes both urban and rural Trust lands to recreational activities when those Trust lands are subject to conditions conducive to increased dust problems, such as heavy recreational vehicular use or post-fire situations, where natural or human-caused environmental conditions pose a risk to public safety and welfare, or for resource protection or remediation.  
The proposed rule will enable the State Land Commissioner to close urban and rural lands to specific uses for remediation purposes, dust abatement, and other public health and safety reasons. Such closures will provide for land and resource protection to the Trust's assets, thus ensuring that the quality, value and usefulness of Trust lands will be

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maintained and improved. The rule can be used by Arizona's law enforcement agencies to cite individuals who use State land for recreation when the land is closed to that activity.

7. **A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review any study relevant to the rule.

8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

9. **The summary of the economic, small business, and consumer impact:**

The State Land Department (the "Department") and the system by which Trust lands were to be managed was established in the 1915 State Land Code. In compliance with the Enabling Act and Arizona's Constitution, the Land Code gave the Department authority over all Trust lands and natural products from the Trust lands.

The mission of the Department is to manage the Land Trust and to produce revenue for the Trust's beneficiaries. All uses of the land and natural resources must benefit the Trust, a fact which distinguishes it from the way public land such as parks or National forests, may be used. While public use of Trust land is not prohibited, use is regulated to ensure protection of the land and its natural resources and to provide for reimbursement to the beneficiaries for its use.

State lands are held in Trust for Arizona's public schools and several public institutions including the State's three Universities, various State hospitals, the School for the Deaf and Blind and State prisons. Revenues earned through leasing or using these State lands provide financial support to assist in the operation of the public schools and the other public institutions.

The proposed rule allows the State Land Commissioner to restrict recreational access to specific State Trust lands in order to provide a measure of public safety, natural resource and environmental protection, and protection to improvements owned by State lessees and permittees whose livelihoods depend on the use of State land and its resources.

Much of the State's 9.3 million acres of Trust land is located in rural areas. Large tracts surround the major metropolitan areas of Phoenix and Tucson with varying amounts lying adjacent to many other Arizona towns and communities. With its open and varied land form, State land attracts many recreational enthusiasts, especially near the metropolitan areas. One does not need to go far from Phoenix, however, to see the damage to the terrain, vegetation, and improvements on State Trust land resulting from uncontrolled use. An increasing number of public complaints have been received regarding dust and other environmental impacts on undeveloped Trust lands adjacent to developing residential and other urban areas.

The Land Department has a duty to maximize the financial benefits from the Trust lands it manages, and the rule is necessary to offer a measure of protection to the Trust's land and resources from further damage, thus maintaining the Trust's land usefulness and value. The Department also has a duty to assist lessees of State Trust land when circumstance beyond the lessee's control devalue the lessee's leasehold interests.

10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

To ensure clarification of the rule, technical and grammatical changes were made. An example of this is reflected in subsections (B) and (C), which identify the procedure for providing public notice of the land closure. No changes, however, altered the substance or intent of the rule.

11. **A summary of the comments made regarding the rule and the agency response to them:**

Principal Comments Received Prior to the Oral Proceeding Held June 30, 2005, and the Agency Response to Them:

The Department received 18 electronically transmitted (e-mailed) comments, two letters, and one telephone call regarding the proposed rule. Of the 18 electronic comments, 17 were from off-highway vehicle users/outdoor recreation enthusiasts, and one was from an off-highway vehicle business owner. The two letters were from off-highway vehicle users as well. The telephone call was from an interested citizen who also is employed with a law enforcement agency. He asked that the oral proceeding be held at a time of day conducive to working individuals. In response to his request, the proceeding was scheduled for late in the day to limit the amount of time working people would have to take off from their jobs.

Summary of Off-Highway Vehicle (OHV) Users/Outdoor Recreation Enthusiasts Comments

The following summarizes, and is representative of, comments received from OHV users and outdoor recreation enthusiasts regarding the rule:

Arizona OHV users have worked to help manage recreational use of State Trust land, and will continue to help. Closing areas just moves the problem to another spot.

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As most of the recreational use is on weekends, there is very little dust during the week.

The long-range effect of the rule will be that OHV use in Arizona will be eliminated. At this time, OHV recreation brings into Arizona 4.3 billion dollars and about 36,000 jobs. All this would be lost. If closed, an area must be closed to all users as all users create dust.

Outdoor recreation enthusiasts utilize State Trust land for a variety of pursuits, including hiking, mountain biking, camping, hunting and OHV activities. All of these activities have the potential to cause dust issues.

There has been a marked decrease over the years in available areas for dirt bike use. Consideration should be given for the need for recreational activities including that of motorized vehicles. There is a growing concern that these rule changes are going to continue closing off more and more state land to recreational use, including horseback riding.

Summary of OHV Business Owner Comment

A business owner expressed concern that closing state land to recreational use will adversely affect Arizona's recreational economy. This individual offered the following suggestions to mitigate dust problems which might cause a closure:

- Identify areas having high dust potential;
- Develop a practical dust monitoring system;
- Distinguish between acceptable and non-acceptable dust limits which may impact use of an area;
- Work with the public/recreational users to develop seasonal use areas;
- Identify preferred areas conducive to heavy recreational use;
- Encourage public stewardship of state recreational lands; and
- Encourage public participation in identifying areas to be closed.

Agency Evaluation: Early on, it came to our attention that members of the OHV community had been in contact with another state agency and may have been misinformed or misunderstood information provided them, as to the true nature of the proposed rule. It became immediately apparent that clarification of the proposed rule needed to be provided as quickly as possible.

Agency Response: All of the people who had submitted comments to the Department, including the single caller, were sent the following written clarification:

“Thank you very much for your comments and concerns regarding proposed rule:

R12-5-534. Land Closures for Land and Natural Resource Management.

The State Land Department manages more than nine million acres of Trust land and resources and has a fiduciary responsibility to enhance value and optimize economic return to its 14 Trust beneficiaries. While public use of State Trust lands is not prohibited, it is regulated to ensure protection of the land and its resources, and to compensate the Trust beneficiaries for its use. Although the Land Department is not mandated or funded to provide recreational opportunities on State Trust land, it does issue Recreation Permits, along with a variety of other leases and permits, which allow access to Trust land. Those uses, however, are not guaranteed.

The Department has received numerous comments regarding this proposed rule. To clarify the purpose of the rule, the following is provided:

The intent of the proposed rule is not to single out a specific recreational use or user, but to ensure the safety and welfare of any permitted user on Trust land and to protect the Trust's natural resources. The rule will enable the State Land Commissioner, under A.R.S. 37-132(B)(8), to close certain Trust lands that pose a risk to the public i.e., mine shafts, sink holes, earth fissures, contamination and dangerous dust situations. Such closures will provide for land and resource protection to the Trust's natural resources, thus ensuring that the quality, value and usefulness of those lands will be maintained and improved for recreational users while safeguarding the public's health and safety.

The Department will be scheduling a public hearing regarding this matter in which any member of the public will be able to attend and provide testimony. Please check the Department's web site at [www.land.state.az.us](http://www.land.state.az.us) for the public meeting date, location, and time.”

Once the agency clarified the intent of the rule, there were no further comments other than the comments made at the oral proceeding.

Principal Comments Received at the Oral Proceeding Held June 30, 2005 and the Agency Response to them:

On Thursday, June 30, 2005, at 3:00 p.m., an Oral Proceeding was held in the Basement Auditorium of the State Land Department, to receive testimony regarding the proposed rule.

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Five people from the public attended the proceeding. A representative from Arizona Trail Riders, an Arizona Off-Highway Vehicle Coalition, testified in support of the proposed rule as long as it applied to all uses and not just motorized vehicles. Another individual testified on behalf of the Arizona Mining Association (AMA) and submitted a letter for the public record from the Association's Land Committee Chairman.

Arizona Mining Association (AMA) Letter Highlights

AMA: "...the proposed rule is generally too broad and vague to meet the minimum standard required to protect the public or the environment."

Agency Evaluation: The proposed rule supports the Commissioner's authority to make decisions regarding the management of State Trust land. It would be impossible to anticipate every situation that could pose a health and safety problem. For this reason, the rule does not detail every possible situation but does provide adequate notice of the types of health and safety problems that could lead to land closure.

AMA: "...ASLD lacks the statutory authority to promulgate the proposed rule because the legislature has limited ASLD's authority to close land to recreational uses to 'urban' lands only."

Agency Evaluation: Although A.R.S. § 37-132(B)(8) references closure of urban lands, this provision must be read in conjunction with A.R.S. § 37-102(B), which gives the Department the "charge and control over all lands owned by the State." The Department believes A.R.S. § 37-132(B)(8) merely specifies the reasons for which the Department may close the urban lands, it does not limit the authority of the Department to close non-urban lands.

AMA: "All land closures for hazardous environmental conditions, including dust abatement, must be based upon site-specific, scientific evidence that such conditions exist in quantified levels that exceed Arizona's environmental standards. The proposed rule should define hazardous environmental conditions as those conditions that exceed the State of Arizona's standards for water quality, air quality, remediation levels, hazardous materials or other Arizona environmental standards."

Agency Evaluation: Closures will be site specific and will identify the hazard or condition that needs to be managed for the benefit of the Trust and to reduce liability to the state. The Department does not have the authority or the resources to regulate specific ADEQ standards but the Department does, however, want to be able to close lands affected by human-caused or naturally-occurring hazardous conditions that pose a risk to public health or safety. Some of these conditions cannot be measured under ADEQ standards, with an example being mine shafts. The depth of an open mine shaft cannot be used as a standard to limit recreational activities, but its mere existence should be reason enough to warrant closure to recreational uses.

AMA: "The proposed rule should include a clear criteria and process for the Department to conduct a hazard evaluation and risk assessment..."

Agency Evaluation: The rule specifies that land will be closed only to reduce liability to the state and protect the public and gives adequate notice of the types of conditions that could lead to closure. The Department believes the rule is as clear as it can be without unnecessarily hindering the Department's ability to deal with closures on a case-by-case basis.

AMA: "Prior to the actual closure of any parcel....require ASLD to conduct a public meeting..."  
"...require ASLD to immediately conduct a remedial investigation and feasibility study..."

Agency Evaluation: There is not a statutory requirement for the Department to conduct public meetings regarding internal management decisions based on statutes, rules, policy and procedures, but before any closure decision is made, all information will be considered, input from other entities will be solicited as deemed necessary, and solutions will be sought prior to any final action. If a problem can be solved quickly, only a temporary closure may be necessary to resolve the problem or a closure might not be necessary at all.

AMA: "All remedial investigations, feasibility studies, remedial actions or mitigation measures should be managed by the Arizona Department of Environmental Quality and not by the ASLD."

"The disposition of abandoned mine workings more properly belongs within the purview of the Arizona State Mine Inspector and not ASLD."

"The reference to 'over-grazing' should be deleted because livestock grazing operations are already regulated.

Agency Evaluation: In compliance with the State Enabling Act and the State Constitution, the 1915 State Land Code gave the Department authority over all Trust lands and its natural products, not the

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Department of Environmental Quality, the Arizona Game and Fish Department, or the State Mine Inspector. This rule does not in any way interfere with the functions of the state agencies mentioned by the commenter.

At the conclusion of the oral proceeding, two individuals each submitted a handwritten statement in support of the rule "...as long as the closures would apply to all users, not just motorized."

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously made as an emergency rule?**

No.

**15. The full text of the rules follows:**

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 5. LEASES

Section

R12-5-534. ~~Repealed~~ Closing Land to Recreational Use

ARTICLE 5. LEASES

**R12-5-534. ~~Repealed~~ Closing Land to Recreational Use**

**A.** The Commissioner may close Trust land in a specific area to recreational use for any of the following purposes when the Commissioner determines that it is in the best interest of the Trust and this state to restrict recreational access to reduce liability to the state or protect the public:

1. Dust abatement: To abate dust caused by the unauthorized use of motorized or non-motorized off-road vehicles on Trust land;
2. Human-caused hazardous environmental conditions: Conditions posing a risk to the public health or safety resulting from human-caused environmental hazards. Examples include illegal dumping of toxic or hazardous materials, leaking or abandoned underground storage fuel tanks, abandoned or unauthorized landfills, abandoned airfields used for pesticide or herbicide storage, abandoned mine workings, and other sites with similar characteristics;
3. Naturally-occurring hazardous conditions: To reduce the risk from naturally-occurring conditions posing a risk to public health or safety. Examples include fissures, sink holes, and flood-damaged areas; or
4. Damaged Trust lands: For protection or remediation of Trust lands that have been damaged by toxic or hazardous materials, mining, fires, off-road vehicles, or other human-caused or natural occurrences.

**B.** The Commissioner shall, by order, close land only to the extent necessary to prevent unauthorized recreational access, and shall specify the period of time deemed necessary for closure.

**C.** The Department shall post the order of Trust land closure to recreation in the Department's Public Records Room at 1616 W. Adams, Phoenix, AZ 85007 and in the Department's District Offices. The Department shall maintain evidence of public notice of Trust land closure in the Department's records.

**D.** For the purpose of this Section, the following definitions apply:

1. "Dust abatement" means to minimize the amount of particulate matter entrained into the air by requiring measures to prevent or mitigate particulate matter creation or emissions.
2. "Environmental hazard" means a chemical, physical agent, biological toxin, or other pollutant that is present in the environment and that may cause human illness or injury.
3. "Remediation" means an environment cleanup or other method used to remove or contain hazardous materials, stabilize mining waste, stabilize soil damage, or restore rangeland or native vegetation.